

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>Sanniu Liu,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>New York Neuromodulation Medical, P.L.L.C., and Kyle Lapidus,</p> <p style="text-align: center;">Defendants.</p>	<p>Civ. Action #:</p> <p><u>Complaint</u></p> <p>Jury Trial Demanded</p>
---	---

Plaintiff Sanniu Liu (“Plaintiff” or “Liu”), by Abdul Hassan Law Group, PLLC, her attorney, complaining of Defendants New York Neuromodulation Medical, P.L.L.C., and Kyle Lapidus (collectively “Defendants”), respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff alleges that she was employed by Defendants, individually and/or jointly, and pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 (b), she is: (i) entitled to unpaid overtime wages from Defendants for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times her regular rate for such hours over forty in a week; (ii) entitled to unpaid minimum wages from Defendants for working and not being paid at a rate of at least the applicable federal minimum wage rate for each and all hours worked in a week; and (iii) to maximum liquidated damages and attorneys' fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. including 29 U.S.C. § 216(b).
2. Plaintiff further complains pursuant to New York Labor Law, that she is: (i) entitled to unpaid overtime wages from Defendants for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times her regular rate for such hours over forty in a week, (ii) entitled to unpaid minimum wages from Defendants for working and not being paid at a rate of at least the applicable New York State minimum wage rate for each hour she worked for defendants in a week; and (iii) is entitled to maximum liquidated damages and attorneys fees, pursuant to the New York Minimum Wage Act ("NYMWA"), N.Y. Lab. Law §§ 650 et seq., including NYLL § 663, and the regulations thereunder.

3. Plaintiff is also entitled to recover her unpaid wages, and wage deductions, under Article 6 of the New York Labor Law including Section 191, 193, and compensation for not receiving notices and statements required by NYLL 195, under Article 6 of the New York Labor Law and is also entitled to maximum liquidated damages – including maximum liquidated damages on all wages paid later than weekly, interest, and attorneys’ fees pursuant to Section 198 of the New York Labor Law.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff’s claim under the Fair Labor Standards Act pursuant to 29 U.S.C. § 216 (b).
5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and/or 29 USC § 216(b).
6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2202, 2201.

THE PARTIES

7. Plaintiff Sanniu Liu (“Plaintiff” or “Liu”) is an adult, over eighteen years old, who currently resides in New York County in the State of New York.
8. Upon information and belief and all times relevant herein, Defendant New York Neuromodulation Medical, P.L.L.C. (“NY Neuro”) was a New York for-profit corporation.
9. Upon information and belief and at all times relevant herein, the corporate Defendant was owned/controlled/managed by Defendant Kyle Lapidus (“Lapidus”) who was in charge of the operations and management of NY Neuro.

10. Upon information and belief and at all times relevant herein, Defendants individually and/or jointly controlled the employment of Plaintiff and was responsible for hiring, firing, scheduling, controlling, managing, supervising, and record-keeping as to Plaintiff's employment, among other employment functions.
11. Upon information and belief, Defendants NY Neuro and Lapidus shared a place of business in New York county, New York at 300 West 72nd Street, Suite 1D, New York, NY, where Plaintiff was employed.
12. At all times relevant herein, Plaintiff was employed individually and/or jointly by Defendants.

STATEMENT OF FACTS

13. Upon information and belief, and at all relevant times herein, Defendants were engaged in the business of providing medical field services to the public.
14. Upon information and belief, and at all relevant times herein, Defendants, individually and/or jointly employed 15 or more employees.
15. Plaintiff was employed by Defendants, individually and/or jointly, from on or about May 23, 2019 to on or about September 14, 2019.
16. At all times relevant herein, Plaintiff was individually and/or jointly employed by Defendants as a manual worker within the broad meaning of New York Labor Law – who as an essential part of her job operated a vehicle and/or handled and transported computer and supplies, etc.
17. At all times relevant herein, Plaintiff was an hourly employee of Defendants and her last hourly rate of pay was about \$43.32 an hour.
18. Plaintiff was not paid any wages for the work she performed during the last two or more weeks of her employment with Defendants - to date, Defendants have failed to pay Plaintiff for such time worked. As a result, Plaintiff seeks to recover all unpaid wages for this period,

including unpaid non-overtime wages, overtime wages and minimum wages – Plaintiff is owed about \$5000 to \$10,000 in unpaid wages for this period.

19. At all times relevant herein, Plaintiff worked 50-55 hours or more each week for Defendants, 7 days a week.
20. At all times relevant herein and for the time Plaintiff was employed by Defendants, Defendants failed and willfully failed to pay Plaintiff an overtime rate of at least 1.5 times her regular rate of pay for all hours worked in excess of forty hours in a week. In addition, Plaintiff was not paid at all for about 10 or more overtime hours each week including time spent doing required documentation for her field work/visits during the day, time spent traveling between sites in the field, time worked beyond the time allotted by Defendants for the field visits/tasks, etc.
21. A more precise statement of the hours and wages may be made when Plaintiff Liu obtains the wage and time records Defendants were required to keep under the FLSA and NYLL. Accurate copies of Plaintiff's wage and time records that Defendants were required to keep pursuant to 29 USC 211, 29 CFR 516 and NYLL 195, 12 NYCRR 142.2-6 are incorporated herein by reference.
22. At all times relevant herein, Plaintiff was a manual worker who should have been paid no later than weekly - Defendants paid Plaintiff bi-weekly in violation of NYLL 191 (1)(a)(i). See *Vega v. CM & Assocs. Constr. Mgmt., LLC*, 175 A.D.3d 1144, 107 N.Y.S.3d 286 (1st Dep't, 2019).
23. At all times relevant herein, neither Defendant provided Plaintiff with the notice(s) required by NYLL 195(1).
24. At all times relevant herein, Defendants did not provide Plaintiff with the statement(s) required by NYLL 195(3) – the statements provided to Plaintiff did not contain all the rates and overtime rates, wages earned, and all hours worked, among other deficiencies.

25. Upon information and belief, and at all times relevant herein, Defendants had revenues and/or transacted business in an amount exceeding \$500,000 annually.
26. At all times applicable herein, Defendants conducted business with vendors and other businesses outside the State of New York.
27. At all times applicable herein and upon information and belief, Defendants conducted business in interstate commerce involving the purchase of medical and other essential supplies for its business.
28. At all times relevant herein, Defendants as a regular part of their business, made payment of taxes and other monies to agencies and entities outside the State of New York.
29. At all times relevant herein, Defendants as a regular part of their business, engaged in credit card transactions involving banks and other institutions outside the state of New York.
30. At all times applicable herein and upon information and belief, Defendants transacted business with insurance companies, banks and similar lending institutions outside the State of New York.
31. At all times applicable herein and upon information and belief, Defendants utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail and telephone systems.
32. Upon information and belief, and at all relevant times herein, Defendants failed to display federal and state minimum wage/overtime posters as required by the FLSA (29 CFR § 516) and NYLL (12 NYCRR § 142-2.8).
33. Upon information and belief, and at all relevant times herein, Defendants failed to notify Plaintiff of her federal and state minimum wage and overtime rights and failed to inform Plaintiff that she could seek enforcement of such rights through the government enforcement

agencies.

34. “Plaintiff” as used in this complaint refers to the named Plaintiff.

35. The “present” or the “present time” as used in this complaint refers to the date this complaint was signed.

AS AND FOR A FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT - 29 U.S.C 201 et Seq. - Unpaid Overtime

36. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 35 above as if set forth fully and at length herein.

37. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the FLSA – 29 USC 201 et Seq.

38. At all times relevant to this action, Plaintiff was engaged in commerce and/or in the production of goods for commerce and/or Defendants, individually and/or jointly, constituted an enterprise(s) engaged in commerce within the meaning of 29 U.S.C. §§ 206, 207.

39. At all times relevant herein, Defendants, individually and/or jointly, transacted commerce and business in excess of \$500,000.00 annually or had revenues in excess of \$500,000.00 annually.

40. At all times relevant herein, Defendants, individually and/or jointly, failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times her regular rate of pay for each hour worked in excess of forty hours in a work week, in violation of 29 U.S.C. § 207.

41. At all times relevant herein, Defendants, individually and/or jointly, failed and willfully failed to pay Plaintiff minimum wage compensation at rates of at least the applicable federal rate of pay for each hour worked in a work week, in violation of 29 U.S.C. § 206.

Relief Demanded

42. Due to Defendants' FLSA violations, plaintiff is entitled to recover from Defendants individually and/or jointly, her unpaid overtime and minimum wage compensation, maximum liquidated damages, attorney's fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

AS AND FOR A SECOND CAUSE OF ACTION

NYLL 650 et Seq. and 12 NYCRR 142-2.2 etc. (Unpaid Overtime + Min. wages)

43. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 41 above as if set forth fully and at length herein.
44. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the New York Labor Law, §§ 2 and 651 and the regulations and wage orders thereunder including 12 NYCRR § 142.
45. At all times relevant herein, Defendants, individually and/or jointly, failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times her regular rate of pay for each hour worked in excess of forty hours in a work-week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.2.
46. At all times relevant herein, Defendants failed and willfully failed to pay Plaintiff at a rate that was at least equal to the applicable New York State minimum wage rate for each hour worked in a week in violation of the New York minimum Wage Act and its implementing regulations. N.Y. Lab. Law §§ 650 et seq.; 12 NYCRR § 142-2.1.

Relief Demanded

47. Due to defendants New York Labor Law violations, Plaintiff is entitled to recover from Defendants, her unpaid overtime, minimum wage compensation, prejudgment interest, maximum liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to

N.Y. Labor L. § 663(1) and the regulations thereunder.

AS AND FOR A THIRD CAUSE OF ACTION

NYLL § 190, 191, 193, 195 and 198

48. Plaintiff alleges and incorporates each and every allegation contained in paragraphs 1 through 47 above with the same force and effect as if fully set forth at length herein.
49. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the New York Labor law, §§ 190 et seq., including §§ 191, 193, 195 and 198 and the applicable regulations thereunder.
50. Defendants, individually and/or jointly, violated and willfully violated NYLL §§ 190 et seq., including §§ 191, 193 and 198, by failing to pay Plaintiff her unpaid non-overtime and overtime wages, minimum wages, contractual wages, and wage deductions Plaintiff was entitled to within the time required by NYLL §§ 191, 193 and 198.
51. At all times relevant herein, Defendants, individually and/or jointly, failed and willfully failed to provide Plaintiff with the notice(s) required by NYLL 195(1) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys’ fees and costs pursuant to NYLL 198 including NYLL 198(1-b), as well as an injunction directing defendants to comply with NYLL 195(1).
52. At all times relevant herein, Defendants, individually and/or jointly, failed and willfully failed to provide Plaintiff with the statement(s) required by NYLL 195(3) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys’ fees and costs pursuant to NYLL 198 including NYLL 198(1-d), as well as an injunction directing Defendants to comply with NYLL 195(1).

Relief Demanded

53. Due to Defendants’ New York Labor Law Article 6 violations including violation of sections 191, 193 and 198, Plaintiff is entitled to recover from Defendants, individually and/or jointly, her entire unpaid wages, including her unpaid non-overtime and overtime wages, minimum

wages, contractual wages, and wage deductions, maximum liquidated damages – including maximum liquidated damages on all wages paid later than weekly, prejudgment interest, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

57. Declare Defendants, individually and/or jointly, to be in violation of the Plaintiff's rights under the Fair Labor Standards Act, Article 6 of the New York Labor Law, the New York Minimum Wage Act, and the Regulations thereunder;
58. As to the **First Cause of Action**, award Plaintiff her unpaid overtime wages and minimum wages due under the FLSA, together with maximum liquidated damages, costs and attorney's fees pursuant to 29 USC § 216(b);
59. As to his **Second Cause of Action**, award Plaintiff her unpaid overtime wages, minimum wages due under the New York Minimum Wage Act and the Regulations thereunder including 12 NYCRR §§ 142-2.2, 2.1, together with maximum liquidated damages, prejudgment interest, costs and attorney's fees pursuant to NYLL § 663;
60. As to his **Third Cause of Action**, award Plaintiff all outstanding wages, including her unpaid non-overtime and overtime wages, minimum wages, contractual wages, and wage deductions, plus maximum liquidated damages – including maximum liquidated damages on all wages paid later than weekly, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198, and issue an injunction directing defendants to comply with NYLL 195(1) and NYLL 195(3).
61. Award Plaintiff prejudgment interest on all monies due;
62. Award Plaintiff any relief requested or stated in the preceding paragraphs but which has not

been requested in the WHEREFORE clause, in addition to the relief requested in the wherefore clause;

63. Award Plaintiff such other, further and different relief as the Court deems just and proper.

**Dated: Queens Village, New York
June 30, 2020**

Respectfully submitted,

Abdul Hassan Law Group, PLLC

/s/ Abdul Hassan
By: Abdul K. Hassan, Esq. (AH6510)
215-28 Hillside Avenue, Queens Village, NY 11427
Tel: 718-740-1000 - Fax: 718-740-2000
E-mail: abdul@abdulhassan.com
ATTORNEY FOR THE PLAINTIFF